

Nussbaum's argument

Doesn't deal with cannibalism

Obscenity (Miller decision, 1973): obscene defined in relation to disgust and revulsion (for average person using community standards)

Disgust: sometimes primary or only reason for making some things illegal

- Homosex

- Human cloning

- Especially heinous crimes (murder)

Lord Devlin, The Enforcement of Morals (conservative political thought)

- Argues for making something illegal even if it causes no harm to others

The law must deal with emotions, cannot exclude them from its formation or the justice system

Emotions are responses to vulnerability

- From Rousseau, our anxieties are connected to our sociality

- To be human is to realize our connection with other humans: we are not above or separate from others: grief, compassion, fear, anger are reminders of our humanity; sympathy, and self-protection.

Law protects us in areas of vulnerability

- Through limits, regulation

- Through torts, correction of wrongs

The basis of disgust and the role it plays in our social life

- Stigmatization, exclusion, denial, secrecy (connected with shame)

Disgust is especially likely to be distorted by cultural norms and is thus unreliable as a foundation for law:

- The content is unreasonable

- Based in magical ideas of contamination (e.g., racist laws)

- Based in denial of humans' animal nature

- Based in aspirations to purity

Humans are animal in nature (however divine or spiritual they may also be), and are mortal

Rights and needs:

All deserve:

SHAME—more complicated emotion than disgust. Irrational and unreliable, bound up with narcissism and failure to recognize the rights and needs of others.

72,

Disgust

Shapes intimacy, provides structure for routines

Shapes social relations, ways of dealing with what is repulsive

Including groups of people.

Even if something harms no one else

Case example: obscenity

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a baseline of civilization: ability to wash, keep clean, and dispose of waste

Freud, Civilization and Its Discontents

--walking upright, changes relation to genitals

human reactions are mediated by a knowledge of death and decay

vs. Mary Douglas, purity and danger

disgust socially contextual; anomaly the key

disgust is violation of socially given limits

runs together impurity and disgust

runs disgust into danger

doesn't account for social ability to regulate and determine disgust

Rozin

Focus on mouth as boundary (neglects, nose, skin, genitals)

Tactile senses vs. distanced senses (hearing, seeing)

--we fear vulnerability

why (some) people feel disgust to people with disabilities

deformation, developmental problem, ?

disgust gets extended to other objects ...notions of contagion, "sympathetic magic"

N: "the core or primary objects of disgust are the reminders of animal vulnerability and mortality"

Disgust is what crosses socially established boundaries

Similarity: contamination from similarity (appearance, smell, touch, etc.)

Infants have to learn disgust---to age 3 don't have it

Usually during toilet training

Parents communicate distaste and disgust to feces

Question: disgust to primary objects and attraction to same

Vomit (in films esp. The Exorcist)

Snot, slimy animals

Decaying substances

Corpses

(refusal to ingest)

combination of disgust and indignation—basically a class distinction:
what “they” do is disgusting, an aristocratic disdain

disgust for what reminds us of our being animals

[but what turns primarily to comedy?—e.g. farts; why is it not as repulsive? Need to control odor...e.g. commercials for odor removing sprays (Febreze) and cover ups (scented oils, etc.) deodorizers, etc.]

people who accept the status quo, don’t get angry at what seems like a common practice:
rape (including marital rape), slavery (to slave owners), attacks on/bullying of
homosexuals, etc., laws against miscegenation, laws of segregation, etc.

Disgust as a basis for law ends up being irrational, hard to argue as a basis for policy and law. Appeal often shifts to something based on reason such as fear, or indignation.

Fear and loathing

Indignation is recognized under the law since it concerns harm or damage. Disgust doesn’t necessarily harm anyone, reflects contamination. Based on “magical thinking”—doesn’t correlate with realistic assessments of risk.

Nazi organization, social engineering, of disgust toward Jews, homosexuals, Gypsies, etc.

Misogynistic disgust: female body.

Birth: animal life and the human body (? Figure of menstruation?)

Women receive semen (it contaminates them?)

Men see their sex object as debased [this seems debatable as a generality]

In US centralized disgust toward homosexual male: anal penetration mixing semen and feces (fear of predation) (jokes about prison rape)

Disgust and obscenity

Postulates the ‘reasonable’ or ‘average’ man (note how this changes over time as the relative availability of image materials changes, and its public circulation)

Miller v. California, 1973

Work, taken as a whole, appeals to prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political or scientific value.”

“prurient interest”—“a shameful or morbid interest in nudity, sex, or excretion”

citation to 3rd Webster’s International: obscene:

disgusting to the senses

grossly repugnant to accepted notions of appropriate

offensive or revolting

OED: offensive to the senses

Or taste or refinement

Disgusting, repulsive, filthy, foul, abominable, loathsome

That which appeals to prurient interests is that which disgusts & that which disgust is what causes sexual excitement

The pornographic is a subset of what is disgusting (links disgust and sexual arousal)

--used to defend films of sex with animals (not appealing to average person)

two standards: arousing/disgusting

reveals that sex itself is considered disgusting (contaminating), esp. with regards

women’s bodies

the female body is an area of stickiness, slime, pollution, and projected onto the woman herself.

Reactions to Joyce and Lawrence: Molly Blooms monologue/Lady Chatterly’s Lover

Both depict a variety of emotions towards the body, but not/never disgust

Elaboration of the MacKinnon/Dworkin position

N: Claims it is not censorship [tricky; ignores circular intent/effect]

Dworkin v. Hustler, --issue of disgust

German law and “offenses against sexual autonomy” (144, 45...)